

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SAM TRUJILLO and DEPARTMENT OF THE ARMY,  
PUEBLO ARMY DEPOT, Pueblo, CO

*Docket No. 99-1472; Submitted on the Record;  
Issued September 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has established an employment-related permanent impairment that entitles him to a schedule award under 5 U.S.C. § 8107; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

In the present case, appellant sustained burn injuries to his left arm and right leg in the performance of duty on December 5, 1973.<sup>1</sup> On October 14, 1998 appellant filed a claim for continuing compensation (Form CA-7) indicating that he was claiming a schedule award. By decision dated January 6, 1999, the Office denied the claim for a schedule award. In a decision dated February 16, 1999, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Board has reviewed the record and finds that appellant has not established entitlement to a schedule award.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.<sup>2</sup> Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, (A.M.A.,)

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<sup>1</sup> It is not clear what specific injuries were accepted by the Office; the record indicates that some of the original evidence filed with the claim could not be located by the Office.

<sup>2</sup> 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

*Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.<sup>3</sup>

In this case, the Office advised appellant in a November 18, 1998 letter that he must submit evidence of a permanent impairment under the A.M.A., *Guides*. There is no indication that appellant submitted any medical evidence prior to the January 6, 1999 decision. Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a schedule award in this case.

The Board further finds that the Office properly denied appellant's request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>6</sup>

With his reconsideration request appellant did submit a form report (Form CA-20) dated January 29, 1999 from Dr. Robert S. Young II, an orthopedic surgeon. Dr. Young notes a loss of motion in the right ankle, but he does not cite to the A.M.A., *Guides* or offer an opinion that appellant sustained a ratable permanent impairment under the A.M.A., *Guides* causally related to the employment injury. The issue is whether appellant has an employment-related permanent impairment that is ratable under the A.M.A., *Guides*, and Dr. Young fails to address this issue. The Board finds that appellant did not submit new and relevant evidence, nor did he meet any of the requirements of 10.606(b). Accordingly, the Office properly denied the claim without merit review.

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<sup>3</sup> A. George Lampo, 45 ECAB 441 (1994).

<sup>4</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.608(b); see also Norman W. Hanson, 45 ECAB 430 (1994).

The decisions of the Office of Workers' Compensation Programs dated February 16 and January 6, 1999 are affirmed.

Dated, Washington, DC  
September 18, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member